Supreme Court rule, it may possibly be justified on the ground that the warranty was not as to a fact absolutely certain, but as to a matter of opinion, in which the insured should be held only to good faith.

PRACTICE—LAW OF THE CASE—MATTERS CONCLUDED BY A DECISION OF APPELLATE COURT.—The United States Supreme Court reversed a judgment for the plaintiff on the ground that, in rendering it, the Missouri court disregarded a judgment of a Connecticut Court which had held an insurance assessment valid. The Missouri court, upon reconsideration of the case, resolved that the Supreme Court had left untouched any consideration of the elements constituting the assessment and decided that a tax imposed by the laws of Missouri had been unlawfully included in the assessment, which was therefore void. The question was whether the state court proceeded in consonance with the decision of the Supreme Court. The defendant contended that the effect of the inclusion of the tax was presented to the Supreme Court, and that, by its decision, the state court was precluded from passing upon the validity of the inclusion of the tax in the assessment. *Held,* that the inclusion of the tax not having been discussed in the former decision, the state court was not precluded from passing on the question, as omissions do not constitute a part of a decision and become the law of the case. Holmes, Van Devanter, and McReynolds, J.J., *dissenting. Hartford Life Ins. Co. v. Blincoe* (1921) 41 Sup. Ct. 276.

When a question arising in the course of litigation has been determined by an appellate court, it cannot, after remand, be raised again and relitigated in the lower court. Black, *Law of Judicial Precedents* (1912) secs. 81, 83; 4 C. J. 1215; but see (1920) 29 YALE LAW JOURNAL, 568. The effect of a decision, as the law of the case, is restricted to propositions of law actually decided, and such points as are necessarily determined by the decision. *Parkin v. Grayson-Owen Co.* (1914) 25 Calif. App. 269, 143 Pac. 257. Where the judgment actually rendered could not have been given without deciding a particular question in a particular way, the decision of it is necessarily implied, although it was not expressly mentioned. *McKinney v. State* (1889) 117 Ind. 26, 19 N. E. 613. Some courts hold that, for a decision to be conclusive, the question involved must have been presented to the court as necessary to a decision in the case, and directly considered and decided, and that parties should not be concluded upon questions that are decided by mere implication arising from the general disposition of a case. *Gwin v. Waggoner* (1893) 116 Mo. 143, 22 S. W. 710. The principal case seems to hold that a decision is conclusive, as an adjudication, only as to those questions consciously before the court. This seems to be the better view, for it is often difficult to ascertain what is necessarily determined by a decision.

PROPERTY—FUTURE INTERESTS—RULE IN SHELLEY'S CASE—A conveyance was made to one Goode, "and after his death to the heirs of his body, their heirs and assigns forever." Goode, after birth of issue, sold to the defendants. The plaintiffs claimed as heirs of the body of Goode. *Held,* that Goode had but a life estate, the rule in Shelley's Case not applying, and that the plaintiffs should take as remaindermen. *Blythe v. Goode* (1920, C. C. A. 4th) 269 Fed. 544.

The rule in Shelley's Case applies where, after a life estate, a remainder is limited to the life-tenant's heirs, or to the heirs of his body, making such a remainder take effect by descent and giving an inheritable interest to the life tenant. But heirs or heirs of the body must be used technically to mean an indefinite succession of the life tenant's issue; and a preliminary question is always raised as to whether the words used mean such indefinite succession or designate particular persons at the death of the life tenant, who may now be the source of the line of descent. In *Archer's Case,* which started this trend of decisions, it was decided that a limitation to R. A. and after to the next heir